

## **PUBLIC EMPLOYMENT RELATIONS COMMISSION**

### **SUBPOENAS**

#### **Proposed Readoption with Amendments: N.J.A.C. 19:15**

**Authorized By:** Lawrence Henderson, Chairman, Public Employment Relations Commission.

**Authority:** N.J.S.A. 34:13A-5.4c and d; N.J.S.A. 34:13A-6e;  
N.J.S.A. 34:13A-11

Calendar reference: See summary below for explanation of exception to calendar requirement.

Proposal Number: PRN .

Submit comments by August 4, 2006 to:  
Lawrence Henderson, Chairman  
Public Employment Relations Commission  
PO Box 429  
Trenton, New Jersey 08625-0429

The agency proposal follows:

#### **Summary**

In accordance with the "sunset" and other provisions of N.J.S.A. 52:14B-5.1, the Public Employment Relations Commission (Commission) proposes to readopt, with amendments, N.J.A.C. 19:15. These rules apply to subpoenas to secure the testimony of witnesses and/or the production of documents in proceedings before the Commission involving all areas of its jurisdiction. See Newark Bd. of Ed. and Newark Teach. Union, Local No. 481, AFT, 152 N.J. Super. 51 (App. Div. 1977). The rules describe the procedures for applying for and issuing subpoenas, set forth the consequences for failing to comply with a subpoena, address witness fees, and explain when and how to file a petition to

quash a subpoena. Pursuant to N.J.S.A. 52:14B-5.1c, N.J.A.C. 19:15 expires on December 28, 2006.

The rules have worked well and enabled smooth processing of Commission cases for several years so only minor amendments are proposed. Those amendments would: add a reference to "other materials" to the phrase "books and papers" to recognize that audio, video and electronically transmitted or stored records may be the object of a subpoena; recognize that, in addition to the Commission, a party requesting a subpoena may initiate a court action to enforce a subpoena where there has been non-compliance; and explicitly provide that a party may file an answer to a petition to quash a subpoena.

**A summary of each section in N.J.A.C. 19:15 follows:**

**N.J.A.C. 19:15-1.1** provides that the Commission, or any designated officer of the Commission, may issue subpoenas. A proposed amendment would add "other materials" to the phrase "books and papers" to ensure that the rule is broad enough to encompass audio and visual materials as well as electronically prepared and stored documents.

**N.J.A.C. 19:15-1.2** provides that a party may file a written application for a subpoena, without naming or providing notice of the witness or the books and papers sought. A proposed amendment to subsection (b) would add "other materials" to the phrase "books and papers" to insure that the rule is broad enough to

encompass audio and visual materials as well as electronically prepared and stored documents. The rule further provides that the Commission or designated officer shall furnish all subpoenas requested, but that the party requesting the subpoenas shall be responsible for serving them.

**N.J.A.C. 19:15-1.3** provides that no person served with a subpoena shall refuse to comply with its terms without first having timely filed a petition to quash. A proposed amendment to N.J.A.C. 19:15-1.3(a) would add "other materials" to the phrase "books and papers" to ensure that the rule is broad enough to encompass audio and visual materials as well as electronically prepared and stored documents. A proposed amendment to N.J.A.C. 1.3(b) would reflect court practice that an application to enforce a subpoena may be made by the Commission or the party requesting it.

**N.J.A.C. 19:15-1.4** provides that witness fees for attendance and travel shall be paid by the Commission for witnesses that it has decided to subpoena and that witness fees for attendance and travel shall be paid by the party requesting the subpoena.

**N.J.A.C. 19:15-2.1** provides that a petition to quash a subpoena may be filed within five days of service of the subpoena and that the Commission or its designated officer shall give notice of the filing of a petition to quash. A proposed amendment would allow a party to file an answer to the petition within five days after being notified of the petition to quash, but would not permit

further replies or responses without leave of the Commission or the designated officer.

**N.J.A.C. 19:15-2.2** provides that a subpoena may be quashed because: it does not reasonably relate to the case; it does not adequately describe the evidence sought; or the evidence sought from the witness is privileged. The Commission or officer shall state the basis of the ruling on the petition to quash.

**N.J.A.C. 19:15-2.3** provides that the failure to file a timely petition to quash bars a later filing of a petition to quash.

**N.J.A.C. 19:15-2.4** provides that the aggrieved party may request that the petition to quash, any answers and the ruling be made part of the record.

As the Commission has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement set by N.J.A.C. 1:30-3.3(a)5.

### **Social Impact**

The New Jersey Employer Employee Relations Act, N.J.S.A. 34:13A-1 et seq., at N.J.S.A. 34:13A-2 declares that it is the public policy of this State that the best interests of the people of the State are served by the prevention or prompt settlement of labor disputes. The Act gives the Commission jurisdiction to determine questions concerning the representation of public employees; hear and resolve unfair practice charges; rule upon disputes concerning the scope of collective negotiations in

public employment; determine whether challenges to the withholding of a teaching staff member's salary increment can be submitted to binding arbitration or be reviewed by the Commissioner of Education; and determine whether a transfer of a school district employee between work sites has been made for disciplinary reasons. The Commission carries out its responsibilities by conducting administrative investigations and holding hearings in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. In order to discharge these responsibilities the New Jersey Employer-Employee Relations Act gives the Commission subpoena power. These rules implement that authority. The rules proposed for readoption with amendments are necessary to allow the Commission to continue to discharge its statutory responsibilities effectively and efficiently.

#### **Economic Impact**

The rules, if readopted, will have no discernible economic impact on the public, since the rules simply outline the procedures applicable to the issuance, quashing and enforcement of subpoenas in Commission cases.

#### **Federal Standards Statement**

The National Labor Relations Act specifically excludes from its coverage "any State or political subdivision thereof." [See 29 U.S.C. §§ 152(2).] Thus, no Federal law or regulation applies to the subject matter of these rules: the issuance, quashing and

enforcement of subpoenas in Commission cases. As there is no comparable Federal rule or standard upon which the Commission can rely to achieve the aim of the New Jersey Employer-Employee Relations Act, the readoption of these rules is necessary and proper.

#### **Jobs Impact**

The Commission does not expect that any jobs will be generated or lost as a consequence of the rules proposed for readoption with amendments.

#### **Agriculture Industry Impact**

The Commission does not expect that the agriculture industry will be affected as a consequence of the rules proposed for readoption with amendments.

#### **Regulatory Flexibility Statement**

The rules proposed for readoption with amendments impose no requirements on small businesses subject to N.J.S.A. 52:14B-16 et seq., the Regulatory Flexibility Act. The Commission has jurisdiction over public sector employer-employee relations.

#### **Smart Growth Impact**

\_\_\_\_\_The rules proposed for readoption with amendments will have no impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Full text of the rules proposed for readoption may be found in

the New Jersey Administrative Code at N.J.A.C. 19:15.

**Full text** of proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

19:15-1.1 Issuance of subpoena

The commission or any designated officer thereof may issue subpoenas to require the attendance of witnesses in the State and the production of books, [and] papers **and other materials** at a proceeding held under the provisions of these rules.

19:15-1.2 Application for subpoena

(a) (No change)

(b) The application for subpoena need not name the witness or the books, [and] papers **and other materials** sought.

(c)-(e) (No change)

19:15-1.3 Failure to comply with subpoena

(a) No person served with a subpoena issued in accordance with this provision of this chapter shall refuse or neglect to appear or testify or to produce books, [and] papers **and other materials** relevant to such investigation, inquiry or hearings as commanded in such subpoena without the timely filing of a petition to quash a subpoena, with the commission or designated officer.

(b) Failure to comply with, or neglect of a subpoena issued by the commission or an officer thereof pursuant to N.J.A.C.

19:15-1.1 (Issuance of subpoena) may be certified by the

commission to a court of competent jurisdiction for an order of compliance. **An application to enforce the subpoena may be made by the Commission or the party that has requested the subpoena, in accordance with court rules.**

19:15-2.1 Petition to quash

(a) (No change)

(b) The commission or designated officer shall give notice of the filing of a petition to quash to the applicant for subpoena. **Any party may file a response within five days after receiving notice of the petition to quash. Neither the petitioner nor any other party shall file any further reply or response without leave of the Commission or the designated officer.**